IN THE HIGH COURT OF UTTARANCHAL, NAINITAL

No. 10-COURT'S ORDER WHETHER THE CASE IS

OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 1333/2001
(Old No. 1533/1988)

Om Prakash & others. Appellants.

Vs.

State Respondents.

Decided on 20-04-2006

A.F.R. (Approved for Reporting)
Not Approved for Reporting

(P.C. Verma, J.)

(B.C. Kandpal, J.)

Dated: 20-04-2006

In the High Court of Uttaranchal, at Nainital.
Criminal Appeal No. 1333/2001
(Old No. 1533/1988)

1-Om Prakash S/o Bishan Dass,
2-Smt. Kanta Devi W/o Om Prakash,
3-Sanjiv Kumar S/o Om Prakash,
All R/o Village Barwala, P.S. Bazpur,
District Nainital ….. Appellants.

Versus

State …Respondents.

Sri Chandra Mauli Shah, learned Amicus Curiae for the Appellants.
Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 20-04-2006

The appellant Om Prakash questions his conviction for offences punishable U/Ss 302 and 307 I.P.C. whereas the other appellants Smt. Kanta Devi and Sanjiv Kumar question their conviction for offence punishable U/S 323 I.P.C.

2- The trial Court has convicted the appellant Om Prakash for the offences U/Ss 302 and 307 I.P.C. and was sentenced to undergo imprisonment for life U/S 302 I.P.C. and seven years R.I. U/S 307 I.P.C. The sentences were to run concurrently. The other appellants Smt. Kanta Devi and Sanjiv Kumar were convicted for the offence U/S 323 I.P.C. and both of them were sentenced to undergo S.I. for six months.

3- Briefly stated the prosecution case is that on 14-07-1985 accused/appellant Smt. Kanta Devi came to the 'Kandu Ki Bathia' of Ram Charan and began to take 'Kandas', on which Smt. Rameshwari W/o Ram Charan asked her not to do so. On this the accused Smt. Kanta Devi went to her house and came back along-with her son accused Sanjiv Kumar and her husband accused Om Prakash. Accused/appellants Smt. Kanta Devi and Sanjiv Kumar were having Lathis with them, whereas accused/appellant Om Prakash was armed with D.B.B.L. Gun. On reaching at the spot at about 8 A.M., accused Om Prakash fired two shots form his gun. The first shot hit Smt. Bhure and the second shot hit Hardayal. The other accused Smt. Kanta Devi and Sanjiv Kumar gave lathi blows to Ram Charan and

his father Bhup Singh. Smt. Bhure on receiving gun shot would died at the spot whereas Hardayal received injuries on his body. Hardayal was brought to the hospital for treatment. The first information report of the incident was lodged by Ram Charan on the same day at 9.15 A.M. at Police Out Post Kela Khera, P.S. Bazpur. On the basis of the statement of the informant, chick F.I.R., Ext. Ka. 1 was prepared and a case U/Ss 302/307/323/34 I.P.C. was registered against the accused/appellants.

4- The investigation of the case was carried by Ranvir Singh S.O. P.S. Bazpur. On receiving information, he went on the spot and performed the inquest on the dead body of Smt. Bhure and prepared inquest reported Ext. Ka. 12. He also prepared challan dead body and photo sketch of dead body, letter to C.M.O. for postmortem, Exts. Ka 12, 13 and 15 respectively. He also took into possession the ornaments form the body of the deceased and prepared recovery memo, Ext. Ka 17. The Investigating Officer also took into possession the empty cartridges from the spot and prepared Fard Ext. Ka. 18. He also took sample of blood-stained and plain earth from the place of the occurrence vide recovery memo, Ext. Ka.19. The I.O. also took into possession 12 bore gun and one belt of cartridges from inside the house of the accused/appellant OM Prakash and prepared recovery memo, Ext. Ka.20. The Investigation Officer visited the place of the incident and prepared site plan Ext. ka. 21. He also sent the gun to Vidhi Vigyan Prayogshala, Lucknow for report. The report of Ballistic Expert is Ext. Ka. 23. The blood-stained Dhoti, Shirt, Petticoat etc of the deceased were also sent for chemical examination. After completing the investigation the I.O. submitted charge sheets, Ext. Ka. 22.

5- The accused persons were committed to the Court of Sessions and the Sessions Judge framed charges U/Ss 302, 307 I.P.C. against accused Om Prakash and charge U/S 323 I.P.C against accused Smt. Kanta Devi and Sanjiv Kumar, to which the accused persons pleaded not guilty and claimed to be tried.

6- The prosecution in order to bring home guilt against the accused, examined 9 witnesses. Out to these, P.W.1 Ram Charan is the complainant and injured witnesses. He this witness has deposed

that at the time of incident the accused Om Prakash was armed with gun and his wife Smt. Kanta Devi and son Sanjiv Kumar were having Lathis. He further deposed that the accused Om Prakash fired two shots from its gun, the first shot hit Smt. Bhure and the Second shot hit Hardaya at his right knee. Smt. Bhure on receiving gun shot injury fell on the ground and died instantaneously. He further deposed that the other two accused assaulted him and his father Bhup Singh with Lathis. This witness has proved the F.I.R. Ext. ka. 1.

7- P.W.2, Girdhari Lal is the eye witness of the occurrence. He corroborated the statement of Ram haran, P.W.1.

8- P.W.3, Dr. K. Tyagi has medically examined the injuries of Bhup Singh and Ram Charan on 14.7.1985 at 11 A.M. and 11.15 A.M. respectively in the P.H.C. Kela Khera. He found the following injuries on the person of Bhup Singh:-

1-Contusion with abrasion 2.00 cm x 1.00cm over anterior surface of left shoulder adjacent to the lateral end of left clavicle oblique, downward and medially, pinkish, oozing present.

2-Contusion 4.00 cm x 2.00 cm size over anterior surface of left shoulder, 1cm lateral to the injury No.1, oblique, downward, medially and pinkish.

3-Lacerated wound 2.00cm x 0.2cm size, surrounded by swelling of 5.00 cm x 3.00 cm over right side of hand, 10.00cm above the right eyebrow, scalp deep, oblique, forwarded and lateral. Bleeding present.

Dr. Tyagi found the following injuries on the person of Ram Charan:

1-Contusion with abrasion 2.00 cm x 1.00 cm over anterior surface of right shoulder, oblique, downward and medially pinkish. Oozing was present.

2-Lacerated wound 3.5 cm x 0.5 cm over right side of head, 17 cm above the right eyebrow, muscle deep, oblique, downward and medially, bleeding present.

3-Swelling 4.00cm x 3.00 cm over left side of head just posterior to left ear.

4-Contusion 4.00 cm x 2.5 cm over medial surface of left thigh, 6.00 cm above the left knee, pinkish and horizontal.

The doctor prepared the injury reports of the injured Bhup Singh and Ram Charan and proved them Exts. Ka.2 and Ka.3 respectively.

9- The doctor also alleged that injured Hardayal was also brought to him for medical aid. He admitted him in the hospital and made its entry in the register. The copy of that entry has been filed and proved by the doctor as Ext. Ka.4. He also deposed that he dressed the injuries of Hardayal and he was sent to another hospital.

10- P.W.4, Hardayal is an injured eye witness. He has corroborated the statement of Ram Charan, P.W.1.

11- P.W.5, Head Constable, Nandan Singh was posted at Police Chauki Kelakhera on the day of the incident. He prepared chick F.I.R. on the basis of oral information of Ram Charan. This witness also proved the copy of G.D. No.7, Ext. Ka 6. He also took blood-stained shirt, Paijama of injured Hardayal Singh in his custody vide recovery memo, Ext. Ka.5. He also deposed that on the day of the incident at 12.30 P.M. accused Om Prakash also lodged a report orally of non-cognizance offence. He prepared the chick F.I.R. He identified the signature of Om Prakash as Ext. Ka.7 and his own signatures on the chick F.I.R. as Ext. Ka.8. He also proved the entry of G.D. No.13 dated 14.7.1985, Ext. Ka. 14.

12- P.W.6, Dr. R.N. Singhal has preformed autopsy on the dead body of deceased Smt. Bhure on 15-7-1985 at 11 A.M. in L.D. Bhatt Hospital, Kashipur. He found following ante-mortem injuries on her person:-

1-Multiple gun shot wound of entry, 34 in number, in an area of 16cm x 13cm, present over left side of face, nose, left eye, left side of forehead and skull. Average size 0.75 cm x 0.75 cm. Directions medially backward downward. 10 pellets recovered from frontal bone and brain.

2- Gun shot wound of entry 0.5cm x 0.5cm present over left side of chest front 2cm laterally to left nipple. One pellet recovered form bone.

3- Abraded contusion 2cm x 1cm present over back of little finger of left hand.

4- Abraded contusion 3cm x1.5 cm present over back of ring finger left hand.

5-Abraded contusion 1cm x 1cm present over back of thumb left side.

In the opinion of the doctor the death of Smt. Bhure was caused due to shock and excessive bleeding due to gun shot. The doctor has proved the post mortem report Ext. Ka.9.

13- On 17-7-1985 the right elbow of injured Hardayal Singh was put to x-ray examination. On the basis of r-ray plate the doctor prepared a report. According to him there was fracture in the bone of right arm. The witness has proved his report, Ext. Ka.10. He also found pellet in the body of Hardayal, which was sealed in a packet and he proved the same, material Ext.1.

14- On 14.7.1985 at 3.35 P.M., in L.D. Bhatt Hospital, Kashipur, P.W.7, Dr. A.K. Lamba has inspected the injuries on the body of injured Hardayal and found the following injury on his person:

"Gun shot wound lacerated with multiple pellet wounds around over post aspect of right elbow in 6cm x 4cm area x bone deep with fresh bleeding from wound present and pieces broken bone lying loose on the base of the wound. Advice x-ray of right elbow."

The witness has proved the injury report, Ext. Ka 11.

15- P.W. 8 Ram Bilas Singh, X-ray Technician, posted in L.D. Bhatt Hospital, Kashipur has preformed the x-ray of right elbow of injured Hardayal Singh and prepared x-ray plate No.69.

16- P.W.9, Ranvir Singh, has investigated the case. He has narrated about the steps taken by him during investigation and also proved the prosecution papers. He also proved the ornaments, material exhibits 2 to 10 taken by him into possession from the body of the deceased Smt. Bhure. He also identified and proved the two empty cartridges,

Simple earth and blood-stained, D.B.B.L. gun and loaded cartridges, as material exhibits 11 to 21.

17- The accused person in their statements U/S 313 Cr.P.C. denied the prosecution allegations and stated that they have been falsely implicated in the case. The accused Om Prakash also stated that on the day of the incident accused Smt. Kanta Devi and Sanjiv Kumar were going to Tube-well for washing their clothes. At that time Ram Charan, Hardayal, Bhup Singh and others began to abuse them and also gave them lathi blows. At this Om Prakash accused came there with his gun and accidentally the gun was fired and it his to Hardayal and Smt. Bhure. However, no evidence was adduced by the accused persons in their defence.

18- The Sessions Judge on appreciation of entire evidence on record held accused Om Prakash guilty U/Ss 302, 307 I.P.C. and sentenced him to undergo imprisonment for life U/S 302 I.P.C. and seven years R.I. U/S 307 I.P.C. The accused Smt. Kanta Devi and Sanjiv Singh were held guilty U/S 323 I.P.C. and both of them were sentenced to six months S.I.

19- Feeling aggrieved, the accused/ appellants have preferred this appeal before this Court.

20- We have heard the learned counsel for the parties and perused the record.

21- The record reveals that the first information report in this case has been lodged on 14-7-1985 at 9.15 A.M. by Ram Charan. The incident is alleged to have taken place on same day at 8 A.M. in Village Kela Khera. The distance of the Police Station from the place of the occurrence is shown about three kilometers. P.W. 1, Ram Charan is the complainant of this case and is also an injured witness. He has submitted the first information report and has deposed in his evidence before the court that he submitted the report at Police Station orally. This witness has proved the first information report as Ext. Ka., 1 keeping in view the distance of the Police Station, the report appears to be quite prompt and we do not find any reason to disbelieve the prompt first information report lodged by the complainant. Prompt first information report clearly rules out the

possibility of any type of deliberation, fabrication, concoction and manipulation of false case against the accused/appellants.

22- The another aspect of the case is the motive of the crime. It has been argued on behalf of the appellants that the motive of this crime has not been disclosed by the prosecution, but this submission cannot be accepted because of the reason that the evidence show that the witnesses have stated that two or three days before the occurrence, there was a dispute with regard to 'mend' between the accused/appellants and the complainant. The scuffle began when Smt. Kanta Devi W/o the appellant Om Prakash, who started to pick up the "Kandas" which were lying towards complainant side and on account of this there was exchange of hot words. Thereafter Kanta Devi went to her house and immediately appeared again at the spot with her husband Om Praksah, who was armed with a gun and her son Sanjiv Kumar, who was armed with Lathi. The appellant Om Prakash thereafter fired two shots which hit Smt. Bhure, who died on the spot, and Hardayal, who sustained fire arm injury on his right elbow. Therefore, the motive to commit this crime has been satisfactorily disclosed by the prosecution.

23- This case rests on direct evidence. The occurrence took place in the daylight. As we have already held, the promptness of the first information report, completely rules out the false implication of the appellants in this crime. Further there is an injured witness of the occurrence, who is, P.W.4, Hardayal Singh and in the medical examination report of this witness, the doctor found "gun shot wound lacerated with multiple pellet wounds around over post aspect of right elbow." The doctor opined that this injury was certainly caused by firm arm. It is further important to mention here that Ram Charan, P.W.1, who is the complainant of this case, has also sustained two contusions and one lacerated wound on his person. This witness has stated that appellant Om Prakash was having a double barrel gun in his hand he fired two shots from his gun, out of these two shots, one hit Smt. Bhure, who succumbed to injury at the spot, and another fire hit Hardayal, brother of the complainant, Ram Charan P.W.1, Ram Charan has further deposed that Kanta Devi and Sanjiv Kumar wife and son of appellant Om Prakash have also assaulted Ram

Charan and his father Bhup Singh with Lathis. We have already discussed the injuries of Ram Charan, which indicate that the injuries on the person of Ram Charan were caused by hard blunt object, like Lathi. Similarly the medical examination report of Bhup Singh also reveals that Bhup Singh sustained two contusions and one lacerated wound on his person and these injuries also could be caused by the hard blunt object, like Lathi.

24- Apart of the injuries sustained by Ram Charan and Bhup Singh, is also reveals that Ram Charan complained had a swelling of 4cm x 3cm situated over left side head, just posterior to left ear. The injuries on the person of Ram Charan and Bhup Singh cannot be said to be self-inflicted or manufactured in any manner. Keeping in view the injuries on the person of Ram Charan it also cannot be observed in any way that the presence of this witness at the spot can be held to be doubtful.

25- The testimony of P.W.1 Ram Charan finds corroboration by the evidence of P.W.2, Girdhari Lal, who has also been produced by the prosecution as an eye witness. Nothing could be pointed out in the cross-examination of this witness which may suggest that this witness is either stating lie or falsely implicating the accused persons in the crime. No enmity could also be pointed out by the defence pertaining to this witness, therefore, the testimony of this witness can also not be doubted in any case. P.W.4, Hardayal Singh has also been produced by the prosecution as an injured eye witness. We have already observed that this witness has also sustained gun shot would on his person and the specific role has been attributed to the accused/appellant Om Prakash for causing fire arm injury on the person of Hardayal Singh P.W.4, Hardayal has stated in his deposition that it was Om prakash who caused fire arm injury on his person. All the eye witnesses produced by the prosecution have also deposed that appellant OM Prakash has fired two shots which hit Bhure Devi and Hardayal Singh. Smt. Bhure Devi after sustaining the fire arm injury on her person succumbed to injury, at the spot. The post mortem of Bhure also indicates that she sustained fire arm injuries on her person and the doctor opined that the cause of death of Bhure was on account of gun shot injury on the vital part of brain.

26- Learned counsel for the appellant has submitted that the witnesses produced by the prosecution are not stating true story and there are contradictions in their statements.

27- We do not find force in this argument. Ram Charan, who lodged the first information report in the Police Station, is an injured witness. He has categorically stated all the facts in the first information report and was medically examined by P.W.3, Dr. K. Tyagi. The nature of injuries sustained by Ram Charan is telling the tale itself, as the injuries on the person of Ram Charan are caused by blunt object, like Lathi. Therefore, the ocular version of Ram Charan finds complete support with the medical evidence. P.W.2, Girdhari Lal is an eye witness and he was cross-examined at length, but nothing could be detected in his cross-examination, to disbelieve his testimony. Moreover there is no enmity between the appellants and this witness. Therefore, there is no reason as to why this witness will falsely implicate the appellants in the case. P.W.4, Hardayal Singh is also an injured witness and he sustained fire arm injuries on his person. He was also medically examined by P.W.3, Dr. Tyagi and his ocular version also finds support with the medical evidence. The perusal of the injury report, Ext. Ka 11 pertaining to Hardayal, P.W.4, shows that the injury on the person of Hardayal was opined to be grievous in nature, therefore, we do not find any material on record, which may suggest that the prosecution story is not established beyond reasonable doubt.

28- It is also noteworthy that the gun, which has been recovered from the house of the appellant Om Prakash, was sent to the Vidhi Vigyan Prayogshala, Lucknow by P.W.9 Ranvir Singh. The report of Vidhi Vigyan Prayogshala, Lucknow shows that the gun recovered in this case was used in the crime.

29- The defence also has admitted this fact that this gun was used in the commission of crime, although the defence has tried to establish that this gun was used in the self-defence. At the same time learned counsel for the appellants has submitted that appellant Om Prakash also lodged the first information report with the police U/S 323 I.P.C. and in this report it has been stated by him that on 14-7-1985 at 8 A.M. when his wife Smt. Kanta Devi and son Sanjiv Kumar were

going to tube-well to wash their cloths, accused Ram Charan, Hardayal Singh, Bhup Singh and Smt. Rameshwari surrounded and started abusing them. They also beat them with Lathis, therefore, in order to save their lives. Om Prakash, who was armed with gun and was also beaten by the accused persons, fired his gun in his self-defence.

30- The argument advanced by the learned counsel with regard to the defence of the appellant, does not appear to be convincing because of the reason that the defence has not produced any evidence in order to establish the allegations mentioned in Ext. Ka. 8, which is the report lodged by appellant Om Prakash.

31- Ext. Kha. 1 is the medical examination report of Om Prakash and Ext. Kha2 is the medical examination report of Sanjiv Kumar, which show that Om Prakash was advised for x-ray but no x-ray plate has been filed by Om Prakash, therefore, nothing can be said with regard to the nature of the injury Nos. 1 and 2 sustained by Om Prakash. Further Sanjiv Kumar sustained simple injuries on his person It has been stated by the defence that four person beat Sanjiv Kumar with Lathis but it is quite strange that Sanjiv Kumar sustained only one simple injury on his person. Therefore, the medical examination report in any case do not held the accused/appellants and on the basis of these documents the self- defense does not appear to be trustworthy and convincing.

32- On the assessment of the evidence on record we come to the conclusion that the prosecution has successfully established the guilt of appellant Om Prakash beyond reasonable doubt and the evidence clearly establish that appellant Om Prakash had fired two shots, out of which, one hit to Smt. Bhure, who died on the spot and other hit to Hardayal Singh, who also sustained grievous injury on his person. Therefore, the charge U/S 302 I.P.C. as well as U/S 307 I.P.C. is proved against the appellant Om Prakash.

33- The evidence further reveal that the appellants Kanta Devi and Sanjiv Kumar were armed with Lathis in their hands and they gave Lathi blows to Ram Charan and Bhup Singh. The injuries sustained by Ram Charan and Bhup Singh were found to be simple in nature. The evidence does not establish the before this occurrence all the

accused/appellants had a common intention to commit the murder, therefore, Section 34 I.P.C. does not come into play, hence appellant Smt. Kanta Devi and Sanjiv Kumar have been rightly convicted and sentenced by the trial court U/S 323 I.P.C. We also do not find any illegality or infirmity in the judgment and order passed by the trial court convicting and sentencing the appellant Om Prakash U/Ss 302/307 I.P.C.

34- Thus the appeal fails and is hereby dismissed. The conviction and sentence passed by the trial court against appellant Om Prakash is hereby confirmed.

35- The impugned judgment and order passed by the trial court convicting the appellants Kanta Devi and Sanjiv Kumar U/S 323 I.P.C. is also confirmed.

36- It has been brought to our notice by the learned counsel for the appellants that Smt. Kanta Devi and Sanjiv Kumar were sentenced to under go six months' Simple Imprisonment by the trial court but during the pendency of this appeal the complainant Ram Charan and injured Bhup Singh have entered into compromise with the appellants Smt. Kanta Devi and Sanjiv Kumar.

37- The record reveals that both the parties, i.e. the complainant side as well as the appellants Kanta Devi and Sanjiv Kumar had filed the compromise application before this Court earlier which was sent for verification to the court of Chief Judicial Magistrate, Udham Singh Nagar by the order of this Court and the compromise application was again refunded back to this Court by the C.J.M., Udham Singh Nagar after due verification.

38- In view of the compromise, filed by the complainant Ram Charan as well as injured Bhup Singh and the appellants Kanta Devi and Sanjiv Kumar, we are of the view that the appellants Smt. Kanta Devi and Sanjiv Kumar should not be sent to jail in order to serve out the sentence imposed against them. However, appellants Smt. Kanta Devi and Sanjiv Kumar need not surrender as they are not to be sent to jail to serve out the sentence imposed against them in view of the compromise.

39- Let the record be sent back to trial court in order to take the steps for taking the appellant Om Prakash into custody to serve out the sentence imposed against him by the trial court.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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